

Lacefield
MC00146

GENERAL INFORMATION:

This case is set for hearing on filing of inventory and appraisal

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. The inventory and appraisal has not been filed.
2. Court ordered it filed by 01/07/04 at time granted attorney fee motion. PC 2640 requires that the I &A be filed prior to allowing any fees.

RECOMMENDATION:

Have clerk give notice of need to file document or suspend powers

Lacefield
MC00146

GENERAL INFORMATION:

This case is set for hearing on Motion to Change Venue to Santa Barbara

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

Motion is not in file.

RECOMMENDATION:

Continue matter if papers not reviewed

McGee
MG 00309

GENERAL INFORMATION:

This case is set for hearing on Review of visitation.

Guardian is maternal grandmother, minor is 6.

Mother and father stipulated to being drug tested.

Re-referred to Family Court Services.

Father lives in Texas, and he seeks termination or out of state visits.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. No drug test results in file.
2. No report from FCS.

RECOMMENDATION:

Set another review hearing

Johnson
MG 00331

GENERAL INFORMATION:

This case is set for hearing on Petition for Appointment of Guardian.

Person only, by maternal aunt, minors 2 ½ and 1 ½ .

Petition for Termination filed by mother.

Parties entered into stipulation with Family Court Services that mother would have custody for 60 days. Court approved.

Attorney Gregory Johnson appointed for minors.

Next FCS appointment was to be on 12-15-03.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need report from 12-15-03 FCS appointment.
2. Need report from Attorney Johnson.
3. If guardianship is still being sought by maternal aunt, the following notes are applicable:
 - a. Temporary letters issued ex parte on 9-4-03 based upon assertion that parents were in West Valley Detention Center.
 - b. Mother filed Petition for Termination on 9-12-03. This could be deemed an Opposition to the Guardianship, as no permanent guardianship has been awarded.

- c. Judge to review medical records in confidential envelope.
- d. Petition for Guardianship asking for special powers at Box 1f. Please specify.
- e. Box 6a on Petition for Guardianship not filled out.
- f. Box 18 on Petition for Guardianship incomplete. No grandparents or other relatives are listed.
- g. Court ordered parties to Mediation with FCS.
- h. On Petition for Guardianship, need to file Notice of Hearing and Proof of Service. Need personal service on father. Mailed service to grandparents and to Court Investigator.
- i. On Petition for Termination, need proof of service by mail on temporary guardian and the relatives (grandparents).

RECOMMENDATION:

Need reports as to best interests of children.

Brown
MG 00333

GENERAL INFORMATION:

This case is set for hearing on OSC re: Further Sanctions

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Citation served on 12-18-03
2. No appearance at 11-24-03 hearing. Court ordered \$150 sanctions for not correcting notes:

Petition for Guardianship, person only, by maternal grandmother, minors 10, 9, 7
Continued from 10-20-03 for correction of notes.

1. Ex parte hearing cancelled by petitioner due to illness.
2. Need to file Notice of Hearing and Proof of Service. Father Miller signed waiver and consent. Is he only the father of the youngest child? Need to provide personal service to Father Brown, along with mother. Mail notice to CI and other relatives. What about paternal grandparents (both sets) and maternal grandfather?
3. Who has physical possession of the children right now?
4. Did not complete box 7b regarding Veteran's benefits.

5. Need to complete UCCJEA as to dates for address.
6. Court to review Confidential Guardianship Screening Form.

RECOMMENDATION:

Issue warrant if no appearance.

Tarrant
MG 00342

GENERAL INFORMATION:

This case is set for hearing on Petition for Appointment of Guardian, person only by "maternal" uncle, minor 13

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Need to file Notice of Hearing and Proof of Service. Need personal service on father or due diligence. Mother is deceased.
2. Need service on DCS, as it appears that petitioner is not a blood relative, but was married to the minor's maternal aunt.
3. Need service on CI.
4. Need to give mail notice to grandparents (maternal and paternal) and any siblings of the minor who are over 12 years of age.
5. Need to give notice to minor.
6. Need to complete Box 16 of petition, if non-relative.
7. This petition cannot correct the birth certificate. Health & Safety Code Section 103225 states: "Whenever the facts are not correctly stated in any certificate of birth, death, fetal death, or marriage already registered, the person asserting that the error exists may make an affidavit under oath stating the changes necessary to

make the record correct, that shall be supported by the affidavit of one other credible person having knowledge of the facts, and file it with the state or local registrar.” If the state or local registrar will not accept that affidavit, the name change can be done by way of petition to the superior court under Code of Civil Procedure Section 1276.

Pritchett
MPR 00810

GENERAL INFORMATION:

This case is set for hearing on Clarification of Total Amount Denied by Judge McGuire pursuant to 09-08-03 order.

Order granted statutory fees and denied administrator's extraordinary fee request of \$1600 and extraordinary fee request of attorney. Notes also indicate problems with charges for food on days when there is no court appearances, and very large phone bills.

[Copy of original notes below:]

Report of Administrator, Petition for Final Account

1. Objection and Rejoinder filed. Set on contested calendar.
2. Statutory administrator fee requested of \$4672.69. OK
3. Administrator requesting extraordinary fee of \$1600. This is based upon 8 days spent to sell property at auction. Problem arose when someone intervened in auction and pulled merchandise from sale. Requesting \$200 per day for the 8 days. As noted in the Opposition, the expenses for lodging, gas and mileage have already been paid to the Administrator. Unclear why this should be

considered an “extraordinary” duty and not part of the normal duties of an Administrator.

4. Accounting shows charges for food on days when there is no court appearance. Shows paid self 50 cents per mile. Very large cell phone bills being charged to estate. For example, on 2-14-02, Verizon Wireless for \$325.29. Appears that minimum phone charge is \$150 per month. Large charges for “office supplies” from Wal-Mart. On 8/22/02 charged \$266.12 for this purpose.
5. Statutory attorney fee requested of \$4672.69. OK
6. Attorney requesting extraordinary attorney fees for handling sale of real property, the sale of personal property, defending a contest of the administrator’s first account, defending an appeal of the award to the administrator. Previously, already paid \$6909 for prior extraordinary services. Detailed billings provided regarding new request for fees. Objection to fees by Fred Pritchett.
7. Issue: Beneficiary debts to estate and the wiping out of distribution.
8. Issue: Lapsed specific devises.
9. Issue: Request for sale of Specifically-Devised Property (relates to debt of Fred)
10. Issue: Debt of residuary beneficiary and presumed death of that beneficiary’s spouse.
11. Issue: Request for Charge against Fred Pritchett. This relates to the auction incident. Fred argues that the Court has already resolved the question of whether Fred was responsible for this. Unclear from record. Fred also argues that to make these charges would be double dipping, as the costs have already been paid by the estate.
12. Issue: Personal liability against two beneficiaries. Objection based in part upon court’s prior order that the attorney fees be charged to them out of their estate. At that time, it was not apparent that the amounts to be distributed would be in the \$500 range, as the estate started out with a value of over \$125,000.
13. Issue: Request for finding of bad faith against Fred Pritchett per PC 859. §859 relates to when a person in bad faith wrongfully takes, conceals or disposes of property belonging to the estate. This is an additional remedy.
14. Issue: Reserve.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Nothing filed for this hearing.

RECOMMENDATION:
Court to review.

Beauregard
MPR 00922

GENERAL INFORMATION:

This case is set for hearing on Accounting Review.

Continued from 10-27-03 since question whether there was proper notice given by clerk

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Not filed yet.

RECOMMENDATION:

Clerk to send another notice, possibly set for OSC re: Sanctions

Knolle
MPR 00942

GENERAL INFORMATION:

This case is set for hearing on Motion for Sanctions

On 12-15-03, court approved final discharge of Suzanne Cervantes and denied the motion for surcharge filed by Linda Fetherstonhaugh.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Motion is based upon the improper law (CCP 128.5, 128.6) cited by Fetherstonhaugh; that there was no proper basis for the motion.
2. Subject motion uses CCP 128.7 as authority for request for sanctions.
3. CCP 128.7 requires that the motion not be filed until at least 21 days after the motion is served. OK here.
4. The 128.7 motion can only seek sanctions against an attorney or unrepresented party. Here, it is directed against the represented Linda Fetherstonhaugh. Not proper.
5. The purpose of 128.7 is to encourage the allegedly offending party to withdraw their improper papers. Here, the motion was served just days before judgment was entered and the motion was denied, and therefore Fetherstonhaugh did not have the full safe harbor

time to withdraw it before this motion for sanctions was filed. See *Eichenbaum v. Alon* (2003) 106 Cal.App.4th 967, 975 and *Barnes v. Dep't of Corrections* (1999) 74 Cal. App. 4th 126.

RECOMMENDATION:

Deny motion on grounds presented.

Lundgren
MPR 00989

GENERAL INFORMATION:

This case is set for hearing on Accounting Review.
Continued from 9-22-03.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. This "accounting" is not in proper format per PC 1061. The only asset, however, was the real property which is now in escrow. If this was meant to be an accounting, then it needs to be in proper format.
2. It could be considered a "status report" under PC 12200, et seq. Only deficiency with it as a status report is that it lacks the required statement in the Notice regarding right to petition for accounting. (PC 12201)
3. Estate not ready to close yet, as escrow not closed.
4. Did not submit proposed order.

RECOMMENDATION:

Determine whether this was intended to be status report or accounting.

Corrections needed for either approach. Will need to set future date for closing of estate, or continue this hearing.

Wittwer
MPR 01072

GENERAL INFORMATION:

This case is set for hearing on Motion for Reconsideration of Sanctions.

Sanctions of \$1000 imposed against Healy & Healy on 10-20-03 due to failure to appear at OSC and for failure to file final I & A.

Powers suspended.

Powers reinstated on 12-01-03.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Declaration filed by attorney regarding sanctions not fair.
2. Full I & A still not filed. Overdue since 7-14-03. Partial filed 4-1-03.

RECOMMENDATION:

Court's discretion

Anderson
MPR 01104

GENERAL INFORMATION:

This case is set for hearing on OSC re: Filing of Inventory & Appraisal
Continued from 12-08-03.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Previous note explained that no bank statements were filed. Still not corrected.
2. Case also on calendar for Final Distribution.

RECOMMENDATION:

Need bank statements, continue again.

Anderson
MPR 01104

GENERAL INFORMATION:

This case is set for hearing on Petition for Final Distribution on Waiver of Account.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Still need copies of bank statements for I &A.
2. Waiver of accounting signed by both beneficiaries.
3. Administrator waiving fee.
4. Didn't submit proposed Order.

RECOMMENDATION:

RFA subject to the filing of bank statements for I &A.

Will need to set hearing for the filing of receipts and final discharge for 1-31-05.

Knight
MPR 01114

GENERAL INFORMATION:

This case is set for hearing on OSC re: Filing of I & A

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Not filed yet.

RECOMMENDATION:

Clerk to notice for continued hearing.

Davies
MPR 01150

GENERAL INFORMATION:

This case is set for hearing on Petition to Determine Succession.
Continued from 11-17-03 and 1-5-04.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

Prior notes:

1. This property is being passed by intestate succession. It goes to the surviving spouse and two children. The children have filed documents indicating that they "disclaim" all rights to the property in question. By this disclaimer, they are then creating rights in their issue/heirs to the real property.
2. **The petition is solely brought by the surviving spouse, but it needs to be brought by all those who are entitled to the property. By way of the disclaimer, those other interested persons would be the spouse and the heirs of the disclaiming children.**
3. While the children may have intended to assign their interests to their father (surviving spouse), that is not the

legal effect of the documents filed. **DECLARATION FILED BY DOVE VASQUEZ ON 1-5-04 IN WHICH SHE REVOKES HER DISCLAIMER, AND ASSIGN THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED: PROPERTY INSTEAD.**

4. **STILL NEED DECLARATION FROM ATOM (SON) REGARDING HIS INTENTIONS.**
5. If the children intended an assignment so that the father could take the entire interest in the property, please file declarations from the children so stating that the assignment was their intention and that they did not understand the legal effect. If their intention was to disclaim, then provide information as to the remaining heirs.

Logrbrinck
MPR 01167

GENERAL INFORMATION:

This case is set for hearing on Petition for Letters of Administration with Full Authority.

Continued from 12-22-03 for correction of notes.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Competing petitions filed. First one filed by Kara. Second one filed by Roy. Kara's is petition for Administration, no will. Roy seeks to probate a will.
2. Kara's petition:
 - a. Bond issue. She indicates value of estate at \$125,000. Unless there is waiver by all, then bond needs to be set for that amount. (fix box 4d)
 - b. Needs to correct box 6a1
3. Roy's petition:
 - a. Needs to file executed Duties of Personal Representative.
 - b. Needs to file proof of due publication.

- c. Requests "minimal" bond, but without any authority. Petition contradicts one filed by Kara regarding value of estate. Roy claims only \$20,000 in personal property and \$5000 in real property. Will indicates there is a house, truck and 1/3 interest in property in Westminster, along with \$20,000 in safe deposit box. Needs explanation.
- d. Box 3b not complete.
- e. Box 9 lists "Sandra Coleman" as relative. She is the lawyer for Kara. Is Sandra Coleman a relative? Correct.
- f. Was original will filed?
- g. Any proof of will per PC 8222?
- h. Did not submit proposed Letters or Order.

RECOMMENDATION:

Neither procedurally complete for approval. Need to resolve will conflict. Once a petition is granted, will need to set future dates for filing of Inventory & Appraisal and for filing of Accounting and/or Status Report.

Graham
MPR 01178

GENERAL INFORMATION:

This case is set for hearing on Petition for Letters of Administration with Full Authority.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need to file proof of due publication.
2. All heirs waive bond.

RECOMMENDATION:

RFA subject to 1. Once approved, need to set hearing for the filing of Inventory & Appraisal for 7-19-04. Set hearing date for status report and/or accounting for 3-21-05. Petitioner to note local rules regarding filing of bank statements.

Boucher
MPR 01180

GENERAL INFORMATION:

This case is set for hearing on Petition for Letters of Administration with Limited Authority
Petition by Creditor

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE NOTED:

1. Need to file proof of due publication.
2. What investigation taken to determine no next of kin? Who is Gary Rear?
3. No bond required of trust institution.
4. Court in its discretion may reject the petition of creditor for administration and appoint another person. PC 8466

RECOMMENDATION:

RFA subject to 1 and court's discretion on 2 and 4. Once approved, need to set hearing for the filing of Inventory & Appraisal for 7-19-04. Set hearing date for status report and/or accounting for 3-21-05. Petitioner to note local rules regarding filing of bank statements.

Gomio Family Trust
MPR 01182

GENERAL INFORMATION:

This case is set for hearing on OSC re: Preliminary Injunction

Ex parte TRO request granted on 12-29-03 subject to the filing of \$10,000 bond.

Bond never filed, so TRO not issued.

Brothers/beneficiary of irrevocable trust, claim that brother/trustee has breached his duties as trustee. Seeking "status quo" order.

THE FOLLOWING ISSUES AND/OR DEFICIENCIES IN THE PAPERS ARE
NOTED:

1. Need to file Proof of Service of documents per ex parte order.
Service needed to have been complete by 12-30-03.
2. No Opposition filed yet.
3. Evidence is based upon allegations of verified Petition and the Declaration of Brian Gomio. Evidence suggests that there has been a failure to provide a copy of the trust document as requested per PC 16061.7 and assets and administration per PC 16061.
4. Only "evidence" of misappropriation of trust funds is the allegation that trustee took \$2000 personal loan.

5. Allegation regarding violation of privacy on rental property unclear. This would not appear to be a violation of trustee's duty, but violation as a landlord.
6. What does the injunction request mean by asking that the trustee be barred from acquiring any trust assets? Personally? As trustee, it would be his job to marshal the assets.
7. The decision whether to grant a preliminary injunction rests in the sound discretion of the trial court. (*IT Corp. v. County of Imperial* (1983) 35 Cal.3d 63, 69.) Trial courts traditionally evaluate two interrelated factors when deciding whether or not to issue a preliminary injunction: (1) the likelihood that the plaintiff will prevail on the merits at trial and (2) the interim harm that the plaintiff is likely to sustain if the injunction were denied as compared to the harm that the defendant is likely to suffer if the preliminary injunction were issued. (*Id.* at 69-70.)
8. Question here regarding harm. Is there any evidence of irreparable harm, or will monetary damages suffice? No evidence of loss of anything other than money. What is the irreparable harm from failure to comply with requirement to provide information and documents? Usual relief is removal of trustee.
9. Plaintiffs filed a Notice to Produce Documentary Evidence pursuant to CCP 1987. Note: service non-compliant with Section 1987. In order for court to take any action to enforce that Notice, a noticed motion must be filed.

RECOMMENDATION:
Court's discretion.